IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5252 OF 2005

Ismail Hasmukh Tacharkar. ... Applicant.
Versus.
State of Maharashtra. ... Respondent.

Shri Uday P.Warunjikar for the Applicant.
Shri R.Y.Mirza, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 12th Sept., 2005.

P.C.:

1. Heard the learned Advocate appearing for the Applicant and the learned A.P.P. for the State.

2. The offence registered against the Applicant and other co-accused is under sections 143, 147, 148, 149, 302 of the Indian Penal Code and section 4(25) of the Arms Act and section 37(1) read with section 135 of the Bombay Police Act.

3. The learned Advocate for the Applicant submitted that at the time of commission of the alleged offence the age of the Applicant was just above 18 years. He pointed out that the Applicant is not identified by any witness in the test identification parade. He pointed out that the Applicant is in custody from 29th December 2004. Lastly he pointed out that the case of the Applicant is not considered on merits by the Sessions Court.

4. The learned A.P.P. has placed relevant material on

record and has opposed the application.

5. I have considered the submissions. The date of the alleged offence is 28th December 2004. The date of birth of the Applicant as reflected from his School Leaving Certificate is 25th May 1986. The memorandum drawn at the time of test identification parade shows that the Applicant is not identified by any witness. The test identification parade was held in February 2005. It is apparent from the order passed by the Sessions Court that instead of considering the case of the Applicant on merits, the Sessions Court has considered the case of the Aaccused No.1 while deciding the bail application made by the Applicant.

6. Considering the age of the Applicant and considering the fact that he is not identified in the test identification parade, a case is made out for enlarging the Applicant on bail.

7. Hence the following order is passed:

(i) The Applicant shall be enlarged on bail in connection with C.R.No.225 of 2004 registered by Camp Police Station, subject to furnishing a personal bond of Rs.15,000/- with one of two local sureties in the like amount.

(ii) Bail is granted subject to condition that till completion of trial the Applicant will attend the concerned Police Station once in a week.

(iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(iv) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

(v) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(vi) Application is disposed of in above terms.

Judge.